

1 MARK B. HANSON, ESQ.  
2 Second Floor, Macaranas Building  
3 Beach Road, Garapan  
4 PMB 738 P.O. Box 10,000  
5 Saipan, Mariana Islands 96950  
Telephone: (670) 233-8600  
Facsimile: (670) 233-5262

5 Attorney for Defendant Robert A. Bisom

6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE NORTHERN MARIANA ISLANDS

8 ROBERT D. BRADSHAW, ) CASE NO. CV 05-00027

9 Plaintiff, )

vs. )

10 COMMONWEALTH OF THE NORTHERN )  
11 MARIANA ISLANDS, NICOLE C. FORELLI, )  
12 WILLIAM C. BUSH, D. DOUGLAS COTTON, )  
13 L. DAVID SOSEBEE, ANDREW CLAYTON, )  
14 UNKNOWN AND UNNAMED PERSONS IN )  
15 THE CNMI OFFICE OF THE ATTORNEY )  
GENERAL, ALEXANDRO C. CASTRO, JOHN )  
A. MANGLONA, TIMOTHY H. BELLAS, )  
PAMELA BROWN, ROBERT BISOM and JAY )  
H. SORENSEN, )

REPLY OF ROBERT A. BISOM TO  
PLAINTIFF'S OPPOSITION TO  
MOTION TO QUASH SERVICE

16 Defendants. )

Date: Thursday, September 7, 2006  
Time: 8:30 a.m.  
Judge: Hon. Alex R. Munson

17 COMES NOW Defendant Robert A. Bisom with the following Reply to Plaintiff's  
18 Opposition to Robert A. Bisom's Motion to Quash Service in the above-referenced matter.  
19 For the reasons stated in Mr. Bisom's Motion, the Memorandum submitted in support  
20 thereof, and in this reply, the Court should quash Plaintiff's purported service on Mr. Bisom  
21 by publication and require Mr. Bisom to comply, specifically, with the Fed. R. Civ. P. 4(f)(1).  
22 Plaintiff has not made, and cannot make, the requisite showing that he is not able to serve Mr.  
23 Bisom other than by publication pursuant to the last resort, substituted service provisions of  
24 the Commonwealth long-arm jurisdiction statute, 7 C.M.C. § 1101 *et seq.*  
25

26 A. Fed. R. Civ. P. 4(f), and the cases interpreting it, requires that a party exercise, and  
27 demonstrate to the Court that it exercised, diligence in its attempts to ascertain the  
28 whereabouts of a foreign defendant prior to resorting to various forms of substituted service,

1 particularly service by publication and other forms of service that controvert the purpose and  
 2 intent of the Hague Service Convention. *See, e.g., Trask v. Service Merchandise Co., Inc.*, 135  
 3 F.R.D. 17, 22(D. Mass. 1991) (“[T]he absence of at least a good faith attempt to comply with  
 4 the Hague Convention prohibits this court from applying the liberal standards of Fed. R. Civ.  
 5 P. 4 in analyzing the propriety of service. . . .”) *Rio Properties, Inc. v. Rio International  
 6 Interlink*, 284 F.3d 1007, 1016-17 (9<sup>th</sup> Cir. 2002) (“Even if facially permitted by Rule 4(f)(3),  
 7 a method of service of process must also comport with constitutional notions of due process.”);  
 8 *Popular Enterprises, LLC v. Webcom Media Group, Inc.*, 225 F.R.D. 560, 561 (E.D. Tenn.  
 9 2004) (finding it notable that, in *Rio Properties*, it was “only after all these efforts failed that  
 10 the plaintiff asked the district court to allow e-mail service”).

11 Here, no such diligence was shown; no such diligence exists. It is Plaintiff’s burden to  
 12 show that service on Mr. Bisom was proper in this case. *See, e.g., Brockmeyer v. May*, 383 F.3d  
 13 798, 801 (9<sup>th</sup> Cir. 2003) (“Once service is challenged, plaintiffs bear the burden of establishing  
 14 that service was valid under Rule 4.” citing 4A CHARLES A. WRIGHT & ARTHUR R. MILLER,  
 15 FEDERAL PRACTICE AND PROCEDURE § 1083 (3d ed. 2002 & Supp. 2003) and *Butcher’s Union  
 16 Local No. 498 v. SDC Inv., Inc.*, 788 F.2d 535, 538 (9th Cir. 1986)).

17 The only facts in evidence of any effort to serve Plaintiff by traditional means, including  
 18 any effort by Plaintiff to determine Mr. Bisom’s address for purposes of Hague Convention  
 19 Service is: in March 2005, in connection with the since dismissed case Mr. Bradshaw filed in  
 20 the United States District Court for the District of Idaho, Bradshaw obtained a report from  
 21 “www.locateplus.com” that showed prior addresses of two persons who apparently have the  
 22 name “Robert A. Bisom,” but no address information for either of the two Robert A. Bisom’s  
 23 therein for any time past November 2000. *See Exhibit “A,” ¶ 1 of Bradshaw’s Affidavit of  
 24 Plaintiff’s Efforts to Locate Robert A. Bisom* filed in this matter on December 9, 2005.  
 25 Plaintiff admits that his efforts at the time were to locate Mr. Bisom (the Robert A. Bisom of  
 26 this case) for the District of Idaho action.

27  
 28 There is no evidence of any further efforts to serve Mr. Bisom personally or further

1 || efforts of Plaintiff to determine the whereabouts of Mr. Bisom.

The only other efforts by Plaintiff to serve Mr. Bisom (other than by publication in this case) were the following: (1) efforts to determine whether Jay Sorensen was still Mr. Bisom's attorney in other pending matters and (2) efforts to serve Jay Sorensen (via his wife Cynthia Sorensen) in lieu of serving Mr. Bisom. *Id.* See also Plaintiff's Affidavit in Support of Motion to Serve Robert A. Bisom by Publication and for a Change to the Period Allowed for Service from 120 Days to 240 Days filed in this matter on December 9, 2005 (no indication that Bradshaw made any effort to locate Bisom, only that he tried but failed to serve Bisom via Sorensen).

Notably, after the Court quashed service for the first time in this matter, Plaintiff admitted his singular prior effort to serve Bisom in this case: “Because Mr. Sorensen now claims to lack authority to accept process for Mr. BISOM, this motion is being filed to request that the court . . . allow BRADSHAW to serve Mr. BISOM by publication.” Id. at ¶ 8 (emphasis in original).<sup>1</sup>

Also, Mr. Bradshaw has never asked any of Mr. Bisom's attorneys, including the undersigned, about Mr. Bisom's whereabouts. As stated earlier, Plaintiff carries the burden of proper service, including proper diligence prior to requesting substituted service or a particular form of substituted service requiring a separate level of diligence. This remains Plaintiff's burden notwithstanding Plaintiff's new position in his Opposition that no one ever came forward and provided him with Mr. Bisom's address. See Plaintiff's Memorandum Opposing Motion of Robert A. Bisom to Quash Service at ¶¶ 9, 11. The problem of service here does not rest with Mr. Bisom's attorney's as Plaintiff suggests; that problem rests squarely with Plaintiff.

25 In short, the only effort Plaintiff has made to determine the whereabouts of Mr. Bisom

<sup>1</sup> Even in his Opposition to this Motion to Quash, Plaintiff continues to assert that service upon Mr. Sorensen should be enough despite this Court’s prior order quashing service on Mr. Bisom through Mr. Sorensen. See Opposition at ¶8.

1 was a March 2005 internet search report that indicated that two Robert A. Bisom's had lived  
2 in various places in the United States for periods through November 2000. The only efforts  
3 to serve Mr. Bisom prior to the Court granting Plaintiff's request for substituted service by  
4 publication were Mr. Bisom's misguided efforts to serve Mr. Bisom through Mr. Sorensen.

Because Plaintiff has failed to exercise the diligence required to avoid his Rule 4(f)(1) service obligations, Plaintiff should be required to start over and properly serve Mr. Bisom through the Hague Service Convention.

B. Further, Title 7, Section 1104(b) of the Commonwealth Code, the substituted service provision under which the Court allowed the present service on Mr. Bisom by publication, requires, among other things, that a litigant show that with reasonable diligence the defendant cannot be served personally or served by mail prior to obtaining leave to serve by publication.

As stated above, there is no evidence to suggest that Plaintiff did anything other than  
1 (1) to determine that some “Robert A. Bisoms” had resided in various places in the United  
2 States through November 2000 and (2) to attempt to serve the Mr. Bisom of this case through  
3 Jay Sorensen, Mr. Bisom’s attorney in other matters. Plaintiff falls far short of his burden  
4 under 7 C.M.C. § 1104(b) and, accordingly, service by publication on Mr. Bisom should be  
5 disallowed.

Respectfully submitted this 31<sup>st</sup> day of August, 2006.

/s/ Mark B. Hanson

MARK B. HANSON

Second Floor, Macaranas Building  
Beach Road, Garapan  
PMB 738, P.O. Box 10,000  
Saipan, MP 96950  
Telephone: (670) 233-8600  
Facsimile: (670) 233-5262

Appearing Specially for Robert A. Bisom

1 CERTIFICATE OF SERVICE

2 I, Rowena de Vera, hereby certify that this day a copy of the foregoing was deposited  
3 in the United States Post Office, first class mail, postage prepaid, addressed to the following:

4  
5 Robert D. Bradshaw, Plaintiff *pro se*  
6 P.O. Box 473  
7 1530 W. Trout Creek Road  
Calder, Idaho 83808

8 Kristin D. St. Peter, Assistant Attorney General  
9 Office of the Attorney General  
Civil Division—Capitol Hill  
10 Second Floor, Juan A. Sablan Memorial Building  
11 Caller Box 10007  
Saipan, MP 96950

12  
13 Jay H. Sorensen, Esq.  
c/o Shanghai  
14 Post Office Box 9022  
15 Warren, MI 48090-9022

16 August 31, 2006

17 /s/ Rowena de Vera

DATED: \_\_\_\_\_

18 \_\_\_\_\_  
ROWENA DE VERA

21  
22  
23  
24  
25  
26  
27  
28